SOUTHERN PACIFIC TRANSPORTATION CO.
EDGAR O. RHOADS

IBLA 98-279 Decided December 31, 2001

Appeal of a decision of the California State Office, Bureau of Land Management (BLM), rejecting an application for patent of railroad grant lands. CACA 36566.

Affirmed.

1. Laches--Railroad Grant Lands

Where an applicant submits no explanation for a 100-year delay in applying for a patent pursuant to the Transportation Act of 1940, and where the land has long been devoted to a particular public purpose, such as inclusion in a forest reserve, BLM properly denies the patent application in accordance with the doctrine of laches.

2. Estoppel--Railroad Grant Lands

Reliance on imprecise notations in federal land records will not operate to divest the United States of title to land. 43 CFR 1810.3(c).

APPEARANCES: Thomas G. Sanford, Esq., Gridley, California, for appellants; David McIlnay, Chief, Branch of Lands, California State Office, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Southern Pacific Transportation Company (Southern Pacific) and Edgar O. Rhoads have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated April 13, 1998, rejecting an application by Southern Pacific on behalf of Rhoads for a patent of railroad grant land (CACA 36566). Rhoads claims entitlement to the land on the basis that he is a successor-in-interest to an innocent purchaser of the land, and, as such, should receive a patent pursuant to section 321(b) of the Transportation Act of 1940 (formerly codified at 49 U.S.C. § 65(b)(1976)). BLM rejected the application on the basis that the doctrine of laches operates against issuing a patent to Rhoads.

The protection of innocent purchasers of railroad grant lands is rooted in the history of the American railroad industry. In order to place

the facts of this appeal in proper context, it is necessary to recount a bit of this history as it has been memorialized by statute and case law.

In 1862, in order to encourage railroad construction, Congress enacted a law granting the Central Pacific Railroad Company alternate sections of public lands, including section 23 at issue here, within a belt extending for a designated number of miles on either side of the railroad's line. Section 3 of the Act of July 1, 1862, ch. 120, 12 Stat. 492, as amended by section 4 of the Act of July 2, 1864, ch. 216, 13 Stat. 358. The grants, however, were not to be effected until the railroad lines were "definitely fixed," and no grants of mineral lands were to be made to the railroads. Id.; see United States v. Southern Pacific Transportation Co., Id.; see 66 IBLA 191, 192 (1982); United States v. Tobiassen, 10 IBLA 379, 381 (1973); Samuel W. Spong, 5 L.D. 193, 194 (1886).

On March 3, 1887, Congress passed the Land Grant Adjustment Act of 1887, which, among other things, established protection for "bona fide purchasers" of unpatented grant lands from the railroad companies. See Southern Pacific Railroad Company v. United States, 228 U.S. 618 (1912). Such purchasers were given a preferential right to obtain a patent from the United States if lands sold them by a railroad were, for any reason, excepted from a railroad land grant. See Section 5 of the Act of March 3, 1887, 43 U.S.C. § 898 (1994); Gertgens v. O'Connor, 191 U.S. 237, 246 (1903); Southern Pacific Co., 71 I.D. 224, 229, 231 (1964).

In September 1940, Congress enacted the Transportation Act of 1940, ch. 722, 54 Stat. 954 (formerly codified at 49 U.S.C. § 65(b)(1976)). That Act provided that any land grant railroad wishing to take advantage of charging higher rates for carrying Government traffic must file a release of any claim it might have against the United States to lands granted to the railroad. Section 321(b) of that Act also protected the rights of innocent purchasers for value of lands sold them by the railroads prior to September 18, 1940, coextensive with "such rights * * * 'as could have been perfected under the existing law, including the 1887 Act.'" See Joseph Perrin, 132 IBLA 49, 54, n.8 (1995), citing Laden v. Andrus, 595 F.2d 482, 485 n.3 (9th Cir. 1979) aff'g Southern Pacific Co. and Heirs of George H. Wedekind, 20 IBLA 365 (1975); Southern Pacific Transportation Co., Donald K. Lee and Charles Siller, 35 IBLA 270, 272, 273-74 (1978)(hereinafter referred to as Lee and Siller); Southern Pacific Transportation Co., 32 IBLA 218, 222 n.1 (1977); Atlantic & Pacific Railroad Co., 58 I.D. 577, 581-82 (1944).

Under the 1940 Act, on October 16, 1940, Central Pacific released its claims against the United States to any remaining unpatented railroad grant land (including the N½NW¼ sec. 23), excluding the rights any innocent purchasers might have in such lands. See Southern Pacific Co., 76 I.D. 1, 2 n.1 (1969), aff'd, Southern Pacific Co. v. Hickel, No. S-1274 (D. Cal. Dec. 2, 1970).

Although portions of section 321(b) of the Transportation Act of 1940 were repealed by section 4(b) of the Act of October 17, 1978, Pub. L. No. 95-473, 92 Stat. 1466, 1468, the 1978 law left intact the provision relating to innocent purchasers, eventually codified at 49 U.S.C. § 10721(a)(2)

(1994). However, on December 29, 1995, Congress passed the Interstate Commerce Commission Termination Act, which repealed 49 U.S.C. § 10721(a)(2) (1994) as it had previously existed. See Pub. L. No. 104-88, tit. I, sec. 102(a), 109 Stat. 819 (1995)(effective Jan. 1, 1996), codified at 49 U.S.C. § 10721 (Supp. IV 1998). 1/

Under these auspices, on January 16, 1996, Southern Pacific, as successor-in-interest to Central Pacific, perfected a patent application on behalf of Rhoads, as the real party-in-interest, seeking a tract of land described as the N½NW¼ sec. 23, T. 18. N., R. 10 E., Mount Diablo Meridian, Nevada County, California, containing 80 acres. The land lies within the Nevada City Ranger District, Tahoe National Forest. (Title Claim Report at 2.) It is undisputed that no patent of the N½NW¼ sec. 23 issued from the United States to Central Pacific or its successors-in-interest. See Decision at 1. Thus, the land has remained unpatented.

In its decision, BLM conceded that Rhoads has established that he is a successor-in-interest, through several intermediate conveyances, to Francis H. and Joseph V. Bell, who purchased the disputed parcel from the railroad in 1896. The decision stated that the land was included within the Tahoe National Forest by Proclamation of the President dated October 3, 1905 (see 34 Stat. 3163) and that the Forest Service has continually managed the parcel for public purposes since that time. The land, according to BLM, is chiefly valuable for timber, is managed for optimal timber production, and encompasses a prehistoric site and wildlife habitat management areas.

BLM rejected Rhoads' application based on the equitable doctrine of laches. BLM relied upon Federal and Departmental case law which states that the privilege granted innocent purchasers of railroad grant lands does not continue indefinitely, and where such purchasers do not act on the privilege within a reasonable period of time, an application for patent will be barred. In support of its decision, BLM noted that the Forest Service has contributed substantially both to the value of the property and to the tax base of the local jurisdiction. The decision stated that "it would be inconsistent with the principles of equity to allow an applicant to essentially utilize the United States as an unpaid property manager, evade its tax responsibilities, and suddenly appear after a century to reap substantial benefits funded by the United States." (Decision at 4.)

In their Statement of Reasons (SOR) on appeal, appellants raise the following challenges to BLM's denial of their patent application. First, ppellants charge that the case law relied on in the decision to support application of the doctrine of laches to deny the patent is not on point. (SOR at 4-5.) Second, they contend that, as an equitable doctrine, laches may not be invoked to circumvent the law--in this case, the Transportation

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1/ See note at 49 U.S.C. § 10101 (Supp. IV 1998) as to the effective date of the Interstate Commerce Commission Termination Act. See also H.R. Conf. Rep. No. 104-422, 104th Cong., 1st Sess., 175-76, which states, in pertinent part: "This provision * * * replaces the rail portions of former section 10721 * * *."

Act of 1940, which imposed no time limitation upon innocent purchasers. (SOR at 3.) Third, appellants charge that BLM has long had notice of the outstanding "innocent purchaser" deed in the N½NW¼ sec. 23, as evidenced by its own notation of such on the master title plat for T. 18 N., R. 10. E. Therefore, appellants maintain, BLM has no basis upon which to complain that it invested in the property without knowledge of the potential outstanding claim. The equities favor appellants and not BLM, they maintain, as they have relied on the notation on the master title plat as protection for their interests. Under these facts, appellants charge, BLM does not bring "clean hands" to the table. (SOR at 6-7.) Appellants further claim that BLM cannot show detriment, as it has obtained income from the property in the interim years; moreover, any investment was made at BLM's own risk, in light of BLM's knowledge of the outstanding encumbrance. Id. Finally, appellants assert that BLM failed to establish that the land was mineral in character; therefore, BLM has no basis upon which to deny the patent application. (SOR at 2.)

In response, BLM concedes that it did not base the decision upon a finding that the parcel was mineral in character (even though BLM found evidence pointing in that direction (Response, Item A.2.)). BLM stands by its use of Galliher v. Cadwell, 145 U.S. 368, 371 (1892), Ramsey v. Tacoma Land Co., 196 U.S. 360, 361 (1904), Southern Transportation Co. and B.K. Herndon, 54 IBLA 174 (1981), and Southern Pacific Company and Heirs of George H. Wedekind, supra, in reaching its decision that the application was barred by laches. (Response, Items B.1., B.3.) BLM notes that the Transportation Act of 1940 is "no longer the law of the land," and cannot be relied upon to protect appellants (Response, Item B.1.). BLM contends that the only law remaining to protect innocent purchasers, 43 U.S.C. § 898 (1994), provides for an equitable remedy, as it "provides a means for people who hold mere wild deeds to purchase title." (Response, Items B.1., B.3.) In response to appellants' argument that BLM had knowledge of the possible innocent purchaser claim, and therefore has "unclean hands," BLM asserts that

> [t]he Master Title Plat merely shows that the property was listed by the railroad (as required by the Transportation Act of 1940) as having been sold. The plan notation was not a determination that a railroad innocent purchaser is entitled to the land, nor was the Transportation Act of 1940 a determination that all claimants are entitled to land.

(Response at Item B.3.)

[1] Pursuant to 43 CFR 2631.1, a patent application "and supporting evidence must be filed by the carrier in the proper office, accompanied by a non-refundable application service charge of $10." Appellants' patent application was filed on December 14, 1995; however, the filing fee for the application was not submitted to BLM until January 16, 1996. Consequently, the filing of the application was not completed until after January 1, 1996, the effective date of the repeal of 49 U.S.C. § 10721(a)(2)(1994), which preserved the innocent purchaser clause of the Transportation Act of 1940. Appellants' argument that they are protected by the innocent purchaser provision of the Transportation Act of 1940 is therefore technically

incorrect, as that Act was repealed prior to the time their application was perfected. However, as we stated supra, the innocent purchaser provision of the Transportation Act of 1940 (as retained by the Act of October 17, 1978) merely preserved rights granted in section 5 of the Act of March 3, 1887, 43 U.S.C. § 898 (1994), which is still in effect; therefore, protection for innocent or bona fide purchasers under the two acts is coextensive. Joseph Perrin, supra at 54 n.8, and cases cited. Accordingly, we will consider this appeal under the body of existing case law interpreting both statutes.

Appellants argue that BLM misapplied legal precedent in finding that the application is barred by laches. Appellants contend that the Board did not ultimately decide either Wedekind or Herndon based on laches, that Galliher v. Cadwell, supra, was not a railroad grant case, and that although Ramsey v. Tacoma Land Company, supra, interpreted the Act of March 3, 1877, it did "not deal with equitable remedies." (SOR at 4.)

Appellants' protests notwithstanding, it is well-settled that where land has long been devoted to a particular public purpose such as inclusion in a forest reserve, laches may bar an application filed pursuant to the Transportation Act of 1940 and 43 U.S.C. § 898 (1994). See Lee and Siller, supra. In Lee and Siller, the Board rejected patent applications for lands located within the Plumas National Forest by invoking laches. Because Lee and Siller summarizes so well the legal precedent pertaining to laches as it has been applied to those claiming protection as bona fide purchasers of railroad grant lands, we quote it at length:

> While the law has generally provided for liberal construction of this remedial legislation, courts have recognized that the right of an innocent purchaser to apply for a patent may be subject to laches. The Supreme Court stated in Ramsey v. Tacoma Land Co., 196 U.S. 360, 363 (1905):
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> > Obviously the statute [Act of March 3, 1887] is not a curative one, confirms no title, but simply grants a privilege. We shall assume that that privilege is not one continuing indefinitely, that the land is not held free from entry until the purchaser from the railroad company has formally refused to purchase, and that he must act within a reasonable time.
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> Southern Pacific Transportation Co. [32 IBLA 218 (1977)] involved open public domain. The Board did not invoke laches and directed a hearing to be held on the question of the innocence of the railroad's vendees. However, the land in the instant case has been included in the Plumas National Forest since 1910, and where land has been devoted to a public purpose such as inclusion in a forest reserve, the claim of an innocent purchaser for value may be barred by laches. United States ex rel. Givens v. Work, 13 F.2d 302 (D.C. Cir.), cert. denied, 273 U.S. 711 (1926). An applicant for a patent is properly chargeable with the laches of his predecessors in

interest. Id. In John Spiers, 37 L.D. 100, 102-03 (1908), the Department rejected an application filed under the 1887 Act, holding:

> At the same time, the right given by the act of 1887 was a privilege or option to acquire right and title rather than a vested right in the land. It did not touch or affect title that remained complete and unimpaired in the United States until such time as the one having this privilege should so act in exercise of it as to show intent to claim the benefit and to obtain title by compliance with the condition fixed. The United States owed him no duty, was under no obligation, but of its free grace offered him a privilege which he might seize upon or not to heal his disappointment at loss of title and disembarrass his entangled affairs. There are no words of grant in the act. The effective words after description of the classes of persons and the conditions of their qualifications are simply that --
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> it shall be lawful for the bona fide purchaser thereof from said company to make payment to the United States for said lands at the ordinary government price for like lands, and that there upon patents shall issue therefor to the said bona fide purchaser, his heirs or assigns.
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> This was a mere privilege and was so held by the court in Ramsey v. Tacoma Land Company [quoted supra] * * *.
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> It is incident to such a privilege that it must be pursued with diligence and is liable to be barred by failure to exercise it until change of conditions make it inequitable to assert it. Thus in Moran v. Horsky (178 U.S. 205, 208), speaking of a right much stronger than that granted by the act of 1887, the court held:
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> We need only refer to the many cases decided in this court and elsewhere that a neglected right, if neglected too long, must be treated as an abandoned right which no court will enforce. See among others Felix v. Patrick, 145 U.S., 317, Galliher v. Cadwell, 145 U.S., 368, and cases cited in the opinion. There always comes a time when the best of rights will, by reason of neglect, pass beyond the protecting reach of the hands of equity, and the present case fully illustrates that proposition.

> These principles equitably and properly bar the applicant. The forest reserve policy is one of great public concern, so recognized by many acts of Congress and by repeated and great appropriations of public money and exchanges of millions of acres of choice public lands to effect as far as possible elimination of private holdings of land within the forest reserves. The Jenkinses [successors in interest to the railroad's vendee] were fully warned by the proclamation of March 2, 1898, that the United States had incorporated these with a large surrounding tract in one of its forest reserves, incurring in respect to it large expenditure of money for conservation of its forest and the water sheds of the streams. If they had right it was their duty with diligence to assert and perfect it. Their title was not cured and the right not one continuing indefinitely. The proclamation saved settlers' rights during "the statutory period within which to make entry or filing of record." Obviously the holder of a mere privilege like this is entitled to no more time to show intent to exercise it than is the settler who has attached himself to the soil, made improvements, expended his money and labor and made himself a home.

Lee and Siller, supra at 274-76.

In United States ex. rel. Givens v. Work, supra at 304, the Court pointed out that a successor-in-interest to a bona fide purchaser only acquires rights the previous purchaser possessed at the time of the conveyance. Therefore, even if Rhoads has diligently pursued the equitable remedies allowed by law, his rights in the tract are nevertheless encumbered by the laches of his predecessors-in-interest. Id. According to title records submitted with the application, Francis H. and Joseph V. Bell, the original purchasers, paid $240 to Central Pacific in consideration of a deed dated August 15, 1896. The deed was duly recorded on June 22, 1898. By 1898, Virginia Bell and her children possessed all rights in the tract. Bell transferred the deed to the Landsburgs in 1902, who held the deed until about 1930, when a mortgage was executed between Clarence Landsburg and Grass Valley Garage, Inc. The interest surfaced again in 1960, when Wayne and Verna Foote conveyed it to Tri-Co. of Nevada, who then conveyed to Harley Hannigan. Rhoads obtained the interest from a bankruptcy trustee handling Hannigan's estate. (Title Claim Report at 2, 4, 6; Exhibit A to Application.)

Based upon the principles heretofore enumerated, we find that, at the very latest, laches attached to the equitable interest during the time that the Landsburg family held the rights. 2/ The Tahoe National Forest

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2/ Under Spiers, the right may not have survived beyond the time granted homesteaders to protect their interests; however, had the matter been adjudicated before inclusion of the land within the national forest, the Department may have perceived the equities differently.

was established in 1905. The Landsburgs made no effort to assert whatever rights they then possessed either before or after the national forest was designated. Therefore, whatever interest the Bells conveyed was eventually extinguished, as no purchaser timely came forth to assert the claim, and as conditions on the tract were changed by virtue of its inclusion within the national forest. United States ex. rel. Givens v. Work, supra; Galliher v. Cadwell, supra; Lee and Siller, supra, and cases cited therein. Worthy of note is that, in John Spiers, supra, quoted above, the Department invoked laches against Spiers just 10 years subsequent to inclusion of the sought-after lands within a forest reserve. Under the standard set forth in Spiers, the mortgage executed between Grass Valley Garage, Inc., and Clarence Landsburg in 1930 was surely worthless, as were all later conveyances, including the claim that Rhoads eventually obtained from Hannigan's trustee in bankruptcy. The equitable interest in the subject parcel held by the initial purchasers was lost through laches many years ago; it cannot now be revived by a remote purchaser.

[2] Appellants, however, claim that laches should not be applied against Rhoads because BLM's notation on the master title plat indicates that the tract is claimed by innocent purchasers; therefore, holders of the interest have been misled by BLM into thinking their claim is absolute and protected. We find no merit in this argument. Title to public lands is granted by patent, not by land records. E.g., Hudson Investment Company, 17 IBLA 146, 170, 81 I.D. 533, 545 (1974).

Even if the notation on the master title plat was misconstrued by Rhoads or by previous successors-in-interest, it will avail appellants nothing. As 43 CFR 1810.3(c) states: "Reliance upon information or opinion of any officer, agent or employee or on records maintained by land offices cannot operate to vest any right not authorized by law." See Howard E. Tingley, 62 IBLA 315, 316 (1982); Robert A. Adams, 57 IBLA 370, 372 (1981). Even were we to find that the notation of the master title plat was erroneous (which we do not), reliance on erroneous notations in federal and county land records can neither serve to divest the United States of title to land, nor estop the United States from denying that title passed. Hudson Investment Company, 17 IBLA at 149, 168-70, 81 I.D. at 534, 544-45; see also, e.g., John J. Schnabel, 90 IBLA 147, 149 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James F. Roberts
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge